

REMARKS

Reconsideration of the application is respectfully requested. In this application, Claims 1-6 are currently pending in the application. It is gratefully acknowledged that Claim 4 would still be allowable if rewritten to include the subject matter of the base claim and any intervening claims.

In the Office Action, the Examiner has rejected Claims 1, 2, 5 and 6 under 35 U.S.C. §103(a) as being unpatentable over Eromaki et al. (U.S. Patent No. 6,748,249); and Claim 3 was rejected under 35 U.S.C. §103(a) as being unpatentable over Eromaki et al. in view of Humphreys et al. (U.S. Publication No. 2003/143961).

Regarding independent Claim 1, the Examiner admits that Eromaki et al. does not teach that the second lid (SL2) includes a keyboard. The Examiner then states that it would have been obvious to one having ordinary skill in the art at the time the invention was made to include a keyboard on the second lid (SL2) in order to have space for more functional keys or to transfer some of the keys from KB1 to the SL2, so that the keys can be made bigger for user convenience. However, it is respectfully submitted that the Examiner makes an unsupported statement regarding the obviousness of the limitations contained in the claims. The Examiner is required to provide support for each and every position used to reject a claim limitation. A recent case decided by the U.S. Court of Appeals for the Federal Circuit specifically addresses this issue. The case, *In Re Lee*, 61 U.S.P.Q.2d 1430 (CAFC 2002), holds “‘common knowledge and common sense’ ... may not be substituted for evidence.” The Examiner has provided no

evidence to support his broad and sweeping “obviousness” rejections. Furthermore, it does not appear to be well known since the facts asserted to be well known should be capable of instant and unquestionable demonstration as being well-known. *In re Ahlert*, 424 F.2d 1088, 165 USPQ 418 (CCPA 1970) Rather, it would be hindsight from the teachings of the present invention. Furthermore, the claimed double key pads being capable of sliding on the display is significant because it provides a patentable distinction and is not merely provided in order to have space for more functional keys or to transfer some of the keys from the first lid to the second lid for bigger sized keys, but in order to provide convenience of key manipulation while chatting, playing a game, or inputting complicated data for transmission of an e-mail using the fingers of both hands. The claimed double key pads being capable of sliding on the display play a vital role in the distinguishing features of the invention.

Second, and to the contrary, Eromaki et al. teaches that the second lid (SL2) is preferably transparent, more preferably of shock-resistant transparent plastic to protect the display, and when it is on top of the display it acts as a lens or the part of the display, which is visible through the second lid (SL2) (Col. 3, lines 45-49). Eromaki et al. does not provide any motivation for having first and second key pads being capable of sliding on the display because having double key pads would defeat Eromaki et al.’s purpose, where the second lid is provided only to protect the display and allow the user to view the display through the second lid. This argument was presented to the Examiner in the November 9, 2005 Response.

In the "Response to Argument" section of the present Office Action (page 2) the Examiner further states that it has been held that duplication of essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8. However, a more pertinent case, *In re Harza*, 274 F.2d 669, 124 USPQ 378 (CCPA 1960), holds "mere duplication of parts has no patentable significance unless a new and unexpected result is produced." The claimed double key pads being capable of sliding on the display plays a vital role in the distinguishing features of the invention in order to provide convenience of key manipulation while chatting, playing a game, or inputting complicated data for transmission of an e-mail using the fingers of both hands, rather than mere duplication of parts. Accordingly, it is respectfully submitted that the rejection of Claim 1 under 35 U.S.C. §103(a) as being unpatentable over Eromaki et al. is improper, and it is respectfully requested that the rejection be withdrawn.

Regarding Claim 3, Claim 3 depends from Claim 1. Therefore, for at least the same reasons as stated above with reference to Claim 1, Claim 3 is believed to be distinguished over Eromaki et al. in view of Humphreys et al. since Humphreys et al. does not cure the above-described defect.

If the above argument puts Claim 1 in condition for allowance, then, at least because of their dependence on Claim 1, dependent Claims 2, 5 and 6 will also be in condition for allowance.

Accordingly, it is respectfully submitted that all of the pending claims, i.e. Claims 1-6, are in condition for allowance. If the Examiner has any questions regarding this communication, the Examiner is requested to contact the undersigned.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Paul J. Farrell", written over the printed name.

Paul J. Farrell

Reg. No. 33,49

Attorney for Applicant(s)

DILWORTH & BARRESE, LLP
333 Earle Ovington Boulevard
Uniondale, New York 11553
516-228-8484

PJF/JWK/mk